

Letter 11

5-04-201 3:28PM

FROM

P. 1



WESTERN SHOSHONE DEFENSE PROJECT

P.O. Box 211308, Crescent Valley, Nevada 89821
phone: 775-468-0230, fax: 775-468-0237, email: wsdp@igc.org

May 4th, 2001

Pam Jarnecke, NEPA Coordinator
Battle Mountain Field Office, BLM
50 Bastian Road
Battle Mountain, Nevada 89820

Re: Comments on Phoenix Project DEIS

Dear Ms Jarnecke,

We hereby submit the following comments concerning the Phoenix Project Draft Environmental Impact Statement. The Western Shoshone Defense Project is a Western Shoshone directed non-profit organization empowered to protect and preserve Western Shoshone rights and homelands for the present and future generations based upon cultural and spiritual traditions. The land involved with the Phoenix Project falls within the boundaries of the Western Shoshone Nation as recognized in the 1863 Treaty of Peace and Friendship with the United States. As part of this Treaty the Western Shoshone Nation agreed to share their lands for various purposes including mining. However it is important to note that the Treaty did not surrender title to any land, nor the rights and responsibilities of the Western Shoshone Nation to protect the values and resources necessary for their survival.

We recognize that mining has occurred on the mine site for over a century; site visits and documentation in the DEIS indicate that this is an area highly disturbed by previous operations. As such, the area has little natural vegetation or wildlife remaining. We commend Battle Mountain Gold and Newmont for their attempt to provide a plan which could significantly improve the ecological function and health of this area. A successful reclamation plan could restore this area and make it available once again for the use of wildlife and the Ncwe (Western Shoshone). With that said, the DEIS as presented is lacking in important information and as such we are not convinced that it is adequate for the public or the BLM to make informed evaluations/decisions about this project. With the information presented, we can only conclude that both the preferred alternative and the no action alternative will allow the destruction and/or degradation of water sources and associated habitat. Water is life here, it is considered sacred from a traditional cultural perspective. Failure to protect all waters in our homelands threatens not only our health and life, but that of all the plants and animals here on our lands.

The DEIS states that the dewatering conducted for the Phoenix Project has the potential to affect 10 springs and a portion of Willow Creek. Any loss of waters is a significant impact. The proposed mitigation does not sufficiently address the ecological function and habitat associated with water sources. Creation of guzzlers and wells to replace springs does not replace the habitat associated with natural springs and riparian areas along creeks. This habitat is important to sage grouse. Thus impacts to sage grouse could be far greater than the no impact indicated in the DEIS if springs and other surface water were eliminated.

It appears that groundwater quality will be degraded in either the no-action or preferred alternative. Again we say that water contamination is not acceptable. We have been here for thousands of years, we intend to be here for thousands more. We will live with whatever impacts this Phoenix Project creates. We ask that you plan far into the future. Will there be a sufficient bond in place before operations begin to cover the expenses of the proposed reclamation plan and any permanent water treatment necessary in the future? If not then the project should not be permitted with only promises of sufficient bond money in the future.

The reclamation and closure plans, while representing a step in the right direction are incomplete and leave us questions. Why is it that the tailings pond is proposed to be constructed with a low density liner, while the heap leach pads are constructed with a high density liner? A two foot cover of soil on the tailings pond would seem to be insufficient for the long term establishment of native vegetation. Many shrubs and bushes native to this area have deeper root systems that would encounter poor and potentially toxic tailings material under the two foot layer. As brush is an important component of the native ecosystem how do you intend to address this?

Wording in the DEIS suggests that drainage which does not meet water quality standards from the tailings and heap leach facilities could be allowed to drain into the ground. Why is it permissible during closure to do things that are highly illegal during the operation of a zero-discharge facility? All toxic contaminants should be contained on site in perpetuity. Because the both the heap leach closure and tailings closure plan details were unavailable for

Responses to Letter 11

11-1 Comment noted.

11-2 Comment noted.

11-3 The text of mitigation measure W-8 in Section 3.5.4 of the Final EIS has been expanded to indicate the full array of mitigation measures that would be applied if wildlife water sources are adversely affected.

11-4 The BLM will ensure that BMG provides sufficient financial assurance for reclamation and for the Contingent Long-term Groundwater Management Plan, prior to project startup.

11-5 The proposed tailings area LLDPE liner material was selected due to its stress/strain properties and suitability to a foundation consisting of existing tailings. The proposed heap leach pad high-density polyethylene (HDPE) was selected to match the stress/strain properties of its foundation materials. Both LLDPE and HDPE have similar permeability properties and meet or exceed state design requirements for protection of the environment.

It has been demonstrated that a nominal 2 feet of growth media is sufficient for the establishment and persistence of native vegetation, especially salt-tolerant species such as shadscale, if there is nothing overly toxic in the tailings material for plants that typically extend their roots below that level. Most plant root biomass occurs in the upper 18 to 24 inches of the soil profile for most reclamation plant species. Depths greater than 2 feet would improve short-term vegetation development, but these greater depths are not necessary for long-term success.

11-6 The specific location in the document where it states or implies, as stated in the comment, that "...drainage that does not meet water quality standards from the tailings and heap leach facilities could be allowed to drain into the ground" is unclear. To the contrary, the mine would operate in accordance with NDEP Regulations Governing Design, Construction, Operation, and Closure of Mining Operations, Section 445.452 Part 1 (State of Nevada 2001). These regulations specify that all mine facilities, regardless of size or type, must be designed, operated, and closed such that they do not degrade waters of the state. Under the NDEP-issued water pollution control permit for the site, no process solutions can be discharged to unlined facilities or allowed to infiltrate to ground water unless BMG can demonstrate to the NDEP's satisfaction that such discharge activities would not have the potential to degrade waters of the state.

Letter 11 Continued

5-04-201 3:29PM

FROM

P. 2

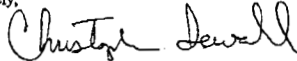
11-6 | this DEIS, it does not seem possible for an adequate evaluation of the long term impacts of this project.
How can bonding be accurately determined without the details of these plans.

11-7 | We ask that you stop using the word borrow to describe areas where soil or clay will be mined for reclamation or construction purposes. According to Funk and Wagnalls Standard Dictionary, borrow is defined as follows: "take or obtain something with the promise or understanding that one will return it." Since none of the clay or soil removed from these sites will ever be returned, it is quite disingenuous to call them "borrow" pits. Such use renders the word meaningless and contributes to the degradation of the English language.

11-8 | The potential for exposure of wildlife to toxic elements such as arsenic in the reclamation material is of great concern because of ongoing Western Shoshone use of plants and animals in traditional cultural practices. The modeling and its assumptions are confusing and incomplete. Arsenic exposure to cottontails is especially significant because the cottontail remains an important food source. New vegetation at reclaimed sites could potentially attract wildlife to the area and increase exposure, which is not accounted for in the model. While it appears that the reclamation material may be tested to see how well plants will grow within it, it does not appear to assess the potential for these plants to accumulate metals, and thus be another potential pathway for the introduction of these toxic metals into the food web. These things need to be better analyzed and the information made available to the Western Shoshone and the public before this project is approved.

11-9 | We appreciate the opportunity to comment on this project. We would like to thank Al Triple and the other Battle Mountain Gold staff for their assistance during previous Western Shoshone site tours/visits. Some of the reclamation we were shown in the Copper Basin area was impressive, and we expect the same high standards throughout the rest of the facilities. It is our sincere hope that future mineral development in the Phoenix Project area will be accompanied by reclamation which protects the waters and provides suitable habitat for the Newe and the plants and animals to once again safely use this area.

Sincerely,



Christopher Sewall
program director, Western Shoshone Defense Project

Responses to Letter 11

11-7 As defined in the Environmental Effects of Mining (Ripley et al. 1996), a borrow pit is: "A pit used for the sole purpose of extracting material for use in mining or construction operations located nearby; it is an aggregate operation licensed only for a specific purpose."

11-8 Please see the response to comment 1-35 regarding a site-specific ecological risk assessment.

11-9 Comment noted.